CONNIE MULL

IBLA 81-243 Decided April 27, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, denying noncompetitive oil and gas lease offer M-37810.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

> The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing is not in the public interest because leasing is incompatible with other uses of the land which are worthy of preservation. Where BLM has consolidated its holdings in order to manage the lands for recreational, scenic, and wildlife values which BLM determines oil and gas leasing would damage, rejection of the lease offer will be affirmed.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Connie Mull appeals the November 24, 1980, decision of the Montana State Office, Bureau of Land Management (BLM), which denied her noncompetitive oil and gas lease offer, M-37810. 1/ BLM rejected

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1/ Appellant filed the July 27, 1977, offer for the following lands in T. 14 N., R. 3 W., Principal meridian, Lewis and Clark Counties, Montana.

sec. 4: lots 6a, 6b, 7a, 7b
8: lot 1
14: lot 2
28: NW 1/4, W 1/2 NE 1/4, W 1/2 SW 1/4
30: lots 1, 2, 3, 4, E 1/2 W 1/2, E 1/2 (all)
32: all
33: all

the lease offer in its entirety in order to safeguard recreational, visual, and other values in this primitive area. 2/

In her statement of reasons, appellant urges that rejection is not necessary to safeguard wildlife habitat, watershed, and Holter Lake recreation and scenery. Rather appellant suggests the imposition of various protective stipulations would accomplish the desired result. Appellant maintains that the record does not support the decision that BLM did not sufficiently consider the multiple use principles incorporated in section 102(a)(7) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. § 1701 (1976).

[1] The Secretary of the Interior, through his authorized representative, BLM, has the discretion to refuse to lease lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the general mining and mineral leasing laws. Udall v. Tallman, 380 U.S. 1, 4 (1965); United States v. Wilbur, 283 U.S. 414 (1930); Burglin v. Morton, 527 F.2d 486 (9th Cir. 1976); John M. Lebfrom, 43 IBLA 67 (1979); Cartridge Syndicate, 25 IBLA 57 (1976). This discretion may be exercised in favor of such considerations as wildlife, endangered species preservation, recreational use, and aesthetic or scenic values. Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966); Carol Lee Hatch, 50 IBLA 80 (1980); R. C. Hoefle, 41 IBLA 174 (1979); Rosita Trujillo, 21 IBLA 289 (1975).

The Board has held that BLM may refuse to issue a lease in the proper circumstances, where BLM outlines the reasons for refusal and provides a record and background data supporting the conclusion that the public interest would be served by rejection of a lease offer. Robert P. Kunkel, 41 IBLA 77 (1979); Cartridge Syndicate, supra at 59. Where the record describes a devotion of land to public purpose which is worthy of preservation and indicates that the development of an oil and gas field would be incompatible with this public purpose and would be less in the public interest than preserving the status quo, BLM's decision not to issue the lease will be affirmed in the absence of a showing by an appellant of reasons for modification or reversal. L. A. Idler (Supp.), 28 IBLA 8, 10 (1976); Rosita Trujillo, supra at 291.

BLM determined that issuance of an oil and gas lease on the disputed land would be detrimental to the watershed, visual and recreational values, and wildlife. BLM expressed particular concern for maintaining scenic quality, avoiding oil spills in or near the Missouri River, avoiding erosion on sensitive soils, maintaining the quality of the Holter Lake and the Missouri River fisheries, and protecting bighorn sheep, elk, mule deer, and osprey.

2/ The decision also rejected the application as to lot 1, sec. 8, T. 14 N., R. 3 W., Principal meridian, because the oil and gas rights are not owned by the United States. Appellant does not appeal the decision as to lot 1, sec. 8.

The disputed area lies within the Sleeping Giant land exchange area. This three-way land exchange between BLM, the State of Montana and a private owner, the Oxbow Ranch, was designed to create blocks of ownership in an area where the previous interlocking ownership had made management difficult for all owners. BLM's newly consolidated holdings create a block of public land directly across Holter Lake from the Beartooth Game Range. In negotiating the land exchange, BLM anticipated that the area would be "protected from commercial development and would be managed for its many values, including primitive recreational use and wildlife habitat." BLM stated that an oil and gas lease in or adjacent to the exchange area would negate the purpose of the exchange.

Appellant suggests that issuance of a lease subject to protective stipulations could mitigate any adverse impact on scenery and recreation. BLM does have the authority to issue an oil and gas lease subject to protective stipulations. Questa Petroleum, 33 IBLA 116, 118 (1977); 43 CFR 3109.2-1. Complete rejection of a lease offer is more extreme than even the most stringent stipulation. Stanley M. Edwards, 24 IBLA 12, 18 (1976). It appears from the record that BLM did consider, but decided against, issuing the leases subject to protective stipulations. 3/

Appellant also argues that there are a number of parcels in private ownership on which the Government could not prevent development and further points out that should a well be drilled in such lands it might well drain oil and gas deposits from Government owned land. The fact that other land may be available for mineral development cannot, and should not, forestall the United States from managing its own lands in such a way as to protect values which it desires to safeguard. Should a successful well completed on private land, commence draining reserves underlying Federal land, the United States could at that time, issue a competitive lease for the land.

The record indicates a considered decision to devote these lands to the preservation of a series of values which are worthy of preservation. It indicates that oil and gas leasing would be incompatible with this purpose. BLM exerted considerable efforts to negotiate a land exchange which would permit BLM to manage the lands for these values. Appellant has failed to show that the decision rejecting the offer did not have a reasonable basis in fact. Carol Lee Hatch, supra; R. C. Hoefle, supra; L. A. Idler (Supp.), supra; Rosita Trujillo, supra.

3/ We agree with appellant that the osprey nesting areas appear to be at least 1 mile east of the areas sought in the lease application, rather than one-fourth mile as suggested in the recommendation of the District Manager to the State Director asking that the application be rejected. Concern for the osprey, however, was only one of many factors relating to wildlife including the fact that certain areas in sec. 33 contain yearlong habitat for bighorn sheep and winter habitat for elk and mule deer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Edward W. Steubing
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge